

OLL85-3967
24 December 1985

MEMORANDUM FOR: DC/ALD/OGC
C/PB/PPG/OS
C/SECOM

FROM:

Legislative Division
Office of Legislative Liaison

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SUBJECT: Request for Comment: Suggested Changes in
Department of Justice Views Letter on S. 1815

1. Based on conversations with the above addressees concerning the proposed Department of Justice views letter on S. 1815, I advised the Office of Management and Budget (OMB) on December 20, 1985 that the Agency objected to the letter in its present form, particularly the language of the amendment which the letter would substitute for the current Section 8 of S. 1815. OMB accepted the objection and indicated that the Justice letter would not be approved for release at present. OMB, however, did ask if the Agency could provide alternative language to the letter and the amendment. Proposed alternative language for the amendment, as well as a more detailed account of my discussions with OMB, is set out below. I would appreciate receiving your comments on them.

2. After noting the Agency's objection, I suggested to OMB that the Administration appeared to be headed towards some sort of "across-the-board" governmental exemption. Obviously, though, the agencies involved would have to agree to the language of such an exemption before they could support it. Further, I suggested that while the Director of Central Intelligence might agree to modify his views letter on S. 1815 (previously transmitted to OMB for clearance) to support such an exemption, he would only do so if he could support that exemption. OMB then suggested that the Agency propose language for such exemption as well as any other changes in the Justice letter which might be required. I promised to consider the matter and get back to OMB.

3. In discussions with the above addressees concerning the Justice amendment, two concerns emerged. First, by exempting the narrower category of "employees of the United States", as opposed to the broader category of "the United States", the Justice amendment did not encompass those situations where polygraph examinations were administered to persons who were neither "employees of the United States" nor employees of a contractor, e.g.; certain types of agents. Second, by linking the exemption

for contractor's employees to those employees having access to classified information, the Justice amendment did not encompass those situations where polygraph examinations were administered to contractor's employees who were to be "cleared" but not for access to classified information; e.g., individuals performing maintenance in a secure area.

4. The following proposed alternative language for the Justice amendment would address these concerns by applying the exemption to "the United States" (as does the House companion bill, H.P. 1524) rather than to "employees of the United States" and by eliminating the requirement that an employee of a contractor actually have access to classified information before he is able to come within the exemption.

The provisions of this Act shall not apply to the United States, a state, city or any political subdivision of a state or city or to any employee of any of the aforementioned. Further, this Act shall not prohibit the administration of a lie detector test to a contractor (at any cost reimbursement level), consultant or expert (or any employee of any of the aforementioned) of any agency of the United States having law enforcement, national security, foreign relations or national defense responsibilities.

5. Assuming agreement can be reached on the above language, the Justice letter would be amended as appropriate. Most particularly, the language on the linkage between the exemption for contractors' employees and the access of such employees to classified information would be deleted.

6. As I indicated to OMB that the Agency would be providing alternative language very shortly, I would appreciate receiving your comments by January 3, 1985, or sooner, if possible.

7. Your cooperation is most appreciated.

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